

BRIAN M. DAUCHER, CAL. BAR NO. 174212
 ASHLEY E. MERLO, CAL. BAR NO. 247997
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 A Limited Liability Partnership
 Including Professional Corporations
 650 TOWN CENTER DRIVE, 4th FLOOR
 COSTA MESA, CA 92626-1993
 TELEPHONE: 714.513.5100
 FACSIMILE: 714.513.5130
 bdaucher@sheppardmullin.com
 amerlo@sheppardmullin.com

PAMELA L. JOHNSTON, CAL. BAR NO. 132558
 JAIME B. GUERRERO, CAL. BAR NO. 192211
FOLEY & LARDNER LLP
 555 SOUTH FLOWER STREET
 LOS ANGELES, CA 90071-2300
 TELEPHONE: 213.972.4500
 FACSIMILE: 213.486.0065
 pjohnston@foley.com
 jguerrero@foley.com

ANDREW B. SERWIN, CAL. BAR NO. 179493
FOLEY & LARDNER LLP
 402 W. BROADWAY, SUITE 2100
 SAN DIEGO, CA 92101-3542
 TELEPHONE: 619.234.6655
 FACSIMILE: 619.234.3510
 aserwin@foley.com

ATTORNEYS FOR DEFENDANTS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRAFFICSCHOOL.COM, INC., A CALIFORNIA
 CORPORATION; DRIVERS ED DIRECT, LLC, A
 CALIFORNIA LIMITED LIABILITY COMPANY,

PLAINTIFFS,

VS.

EDRIVER, INC.; ONLINE GURU, INC.; FIND
 MY SPECIALIST, INC., AND SERIOUSNET,
 INC., CALIFORNIA CORPORATIONS; RAVI K.
 LAHOTI, AN INDIVIDUAL; RAJ LAHOTI, AN
 INDIVIDUAL; AND DOES 1 THROUGH 10,

DEFENDANTS.

CASE No: CV 06-7561 PA (CWx)

**DECLARATION OF DAVID GRAY IN
 SUPPORT OF DEFENDANTS'
 OPPOSITION TO PLAINTIFFS'
 MOTION FOR CONTEMPT**

DATE: FEBRUARY 2, 2009
 TIME: 1:30 P.M.
 PLACE: COURTROOM OF HON. PERCY
 ANDERSON

I, David Gray, hereby declare the following:

1. I am the Director of Technology at Online Guru, Inc. ("Online Guru"). I
 have personal knowledge of the facts hereinafter stated and hereby testify competently
 thereto as a witness in the above-captioned matter.

1 2. Online Guru is responsible for managing the business operations and
2 content of the website located at www.dmv.org (the "DMV.ORG").

3 **BACKGROUND**

4 3. I hold a Bachelors of Science degree in electrical engineering from Purdue
5 University with concentrations in micro-controller programming and Digital Signal
6 Processing applications. I am also certified as a Microsoft Certified Solutions Developer
7 (MCSD).

8 4. During the course of my professional career, I have worked on the
9 development of client server applications, e-commerce, content management
10 applications, consumer portals, and network analysis tools.

11 5. As Online Guru's Director of Technology, I am responsible for and oversee
12 the company's information technology department, which in turn, is responsible for,
13 among other things, development and technological planning (including that of
14 DMV.ORG), and support of network systems and applications.

15 6. In my capacity as Director of Technology, I was personally involved in the
16 deployment, implementation and support of the splash page as ordered by this Court's
17 August 26, 2008 Judgment and Permanent Injunction ("Injunction"). Specifically, I
18 participated in the discussions, analysis and decision-making regarding the
19 implementation plan for the splash page and oversaw the team responsible for
20 implementation of the page.

21 **IMPLEMENTATION OF THE SPLASH PAGE**

22 7. Even prior to the issuance of the Injunction at the end of August 2008,
23 Online Guru began researching and analyzing the implementation of a splash page on
24 DMV.ORG. This was done in light of the Court's Proposed Injunction in June 2008. As
25 a result of this work over the summer, when the injunction was served upon defendants
26 on August 28, 2008, we were able to take the splash page live the next day,
27 August 29, 2008. The implementation of a splash page for a website such as DMV.ORG
28 is a very difficult task for several reasons.

1 8. First, the DMV.ORG website has nearly 120,000 pages, and the
2 deployment of the splash page across those pages presented a significant challenge
3 because each of those pages is a potential "entry" or arrival page. As a result, any splash
4 page deployment would have to both function on each of those pages when those pages
5 serve as entry pages, but not function on those pages when they are viewed in a sequence
6 after the entry page by a specific visitor.

7 9. Second, users access DMV.ORG's content and information primarily
8 through the use of search engines. A splash page, if not implemented properly, will
9 prevent users from finding DMV.ORG's content through the use of search engines such
10 as Google and Yahoo!. This is because search engines index websites based on their
11 content, and the content of the splash page can replace or mask the website's true content.
12 As a result, with the wrong type of splash page, the accessibility of a website's true
13 content will drop, and every page will appear to have the same content (*i.e.*, merely the
14 language in the splash page). This problem is well recognized in the web page design
15 industry and has led many designers to recommend against the use of splash pages
16 altogether:

17 a. Larissa Thomason, *Promotion Tip: Splash Pages May Drown Your*
18 *Website* at <http://www.ewebarchitecture.com/tip.php?id=83> ("Most search engine
19 algorithms rank pages based on a combination of HTML Code Elements, page
20 content, and link popularity. Splash pages, deficient in all three areas, often turn
21 away spiders [programs that index web pages for search engines] as efficiently as
22 they turn away visitors. Furthermore, . . . [a] splash page hides some of your
23 content from search engines by adding another level without adding much value to
24 the site.");

25 b. Aaron Wall, *Why Splash Pages are Bad for Rankings* at
26 <http://www.search-marketing.info/traps/splash.htm> ("Many search engines cannot
27 effectively navigate through and index flash [splash pages]. This means that you
28 have little to no content to optimize and more than likely will not be able to

1 achieve top rankings.”)

2 c. Jennifer Kyrnin, *About.com: Web Design/HTML Splash Pages: Pros*
3 *and Cons* at <http://webdesign.about.com/od/navigation/a/aa020303a.htm> (“Splash
4 pages break search engines. Since many splash pages only include a flash
5 animation there isn’t a lot for search engines to optimize on. And if you add
6 content to the page in comments you can be penalized for spamdexing.”);

7 d. Helen Faber, *Why Avoid a Splash Page* at
8 <http://www.webfuel.ca/Why-avoid-a-splash-page> (“Often splash pages turn away
9 spiders just like their site visitors. Without direct access to the URL structure
10 search engines find it difficult to crawl and index a site. Lack of a proper link
11 structure to internal web pages (usually only one link that goes to one page)
12 hinders these pages from getting indexed. This will *of course* hurt your potential
13 search engine ranking.”) (emphasis in original).

14 Attached hereto as Exhibits 18 - 21 respectively are true and correct copies of these
15 articles. A splash page that masks DMV.ORG’s content from search engines would be
16 catastrophic and would prevent users from finding its content through search engines.
17 Simply put, DMV.ORG would cease to generate meaningful results for users of search
18 engines such as Google and Yahoo!.

19 JAVASCRIPT AND COOKIES

20 10. In developing and deploying the splash page for DMV.ORG, Online Guru
21 had to consider several technical requirements and the continued viability of the website.

22 11. As mentioned above, Online Guru had to deploy the splash page in a
23 manner that would still allow users to search for and find DMV.ORG’s information
24 through search engines.

25 12. Furthermore, a splash page would require DMV.ORG servers to maintain
26 “state” with a user’s visit (to track that specific visitor's prior page visits). This is
27 necessary to ensure the splash page is displayed upon a user’s first entry to the website,
28 and that it is not again displayed on other pages for the user’s length of the visit to the

1 website.

2 13. To cope with these issues, Online Guru employed widely used and accepted
3 technologies including JavaScript and Cookies.

4 14. JavaScript was chosen as a solution because it assures that the splash page
5 is not displayed to search engines. JavaScript is able to accomplish this because it is a
6 client side technology. In other words, JavaScript is interpreted and run by a user's
7 browser. Thus, a programmer using JavaScript is able to assure that a browser performs
8 certain functions, such as the display of an image or text, only if certain parameters are
9 met. To assure, the continued existence of DMV.ORG it was imperative for us to be able
10 to do the following: display the splash page to users, while not displaying the splash
11 page to search engines. A specific trait that search engines share is that they do not
12 accept cookies when crawling and indexing web pages. Consequently, JavaScript was
13 the ideal technology. In our case, JavaScript was used to specify that the browser display
14 the splash page (the "function") based on the presence of a cookie (the "parameter").

15 15. Client side technologies are distinct from server side technologies which
16 are executed on the server. In the case of client side technology, a cookie is sent from
17 the server to the browser which is accessible from JavaScript. Search engines do not
18 accept cookies, so if the JavaScript program does not find the cookie locally, it is highly
19 likely that the request is from a search engine and the splash page will not be displayed.
20 On the other hand, if the JavaScript program has access to the cookie, the request is
21 highly likely to be coming from a user and the splash page will be displayed.

22 16. As Director of Technology for Online Guru, I routinely monitor and review
23 other websites for usage statistics concerning users to those sites. Two websites which I
24 have visited and reviewed for their user statistics are www.w3schools.com and
25 www.thecounter.com.

26 a. www.w3schools.com ("w3schools") is an internet site providing
27 free information and resources targeted at web developers. *See*
28 http://www.w3schools.com/about/about_pagehits.asp. In January 2008, the site

1 had 11,571,428 unique visitors and 81,768,558 page views. *Id.* w3schools tracks
2 several user statistics and compiles statistics by using its own log-files and
3 monitoring other resources around the Internet. Among these statistics are yearly
4 figures for w3schools visitors using web browsers with JavaScript turned on from
5 January 2000 through January 2008. *See*
6 http://www.w3schools.com/browsers/browsers_stats.asp. According to such
7 figures, the percentage of user with JavaScript turned on has gone up every single
8 year from 2000, reaching 95% in 2008. Attached hereto as Exhibit 22 is a true and
9 correct copy of a screenshot of w3schools displaying such figures.

10 b. www.thecounter.com ("TheCounter") is a third-party website
11 providing web analytic tools. Like w3schools, TheCounter tracks and compiles a
12 number of user statistics for visitors to its site. Among these statistics is a figure
13 tracking the percentage of site visitors using JavaScript enabled web browsers
14 from February 1, 2008 through December 31, 2008. *See*
15 <http://www.thecounter.com/stats/2008/December/javas.php>. According to such
16 figure, over 93% of the site's 50,185,204 visitors for that time period had
17 JavaScript enabled browsers. *Id.* Attached hereto as Exhibit 23 is a true and
18 correct copy of a screenshot of TheCounter displaying such figure.

19 c. While different web sites attract different types of users and target
20 different audiences, the above figures are compatible and supported by Online
21 Guru's own statistics pertaining to its own visitors and users as set forth in the
22 Declaration of Scott Annett In Support of Defendants' Opposition to Plaintiffs'
23 Motion for Contempt.

24 17. Cookies are mere text files placed on the user's system as a method to
25 maintain a user's "state" – *i.e.*, remember whether or not the user was shown a splash
26 page upon entry to DMV.ORG. The cookies that DMV.ORG uses are not permanent
27 files deposited to track broader use, but rather are mere "session" cookies, used to track
28 only that specific session on the site. As a result, if a visitor initiates a new "session" or

1 new visit to DMV.ORG, the visitor will again see the splash page first and a new
2 "session" cookie will be established.

3 18. As discussed in the paragraph 14, cookie technology is also used as a
4 method to determine if an access request was coming from a search engine or a user.
5 This is because search engines do not accept cookies. As a result, if a cookie is enabled,
6 this mechanism will assume that the access request is coming from a user's web browser,
7 and then run JavaScript to display the splash page. In this way, search engines, whose
8 purpose is to seek true content, are allowed to see the site, while users when they click
9 through first see the splash page.

10 19. In preparing this declaration, I conducted a review of numerous well-
11 known websites to determine whether or not they relied on the use of cookies. Examples
12 of websites that use cookie technology include, without limitation:

- 13 a. <http://www.amazon.com>
- 14 b. <http://www.webmd.com>
- 15 c. <http://www.apple.com>
- 16 d. <http://www.yahoo.com>

17 20. I also reviewed Plaintiffs' website at <http://www.trafficschool.com>
18 ("Trafficschool") to determine whether or not it relies on the use of JavaScript and
19 Cookies. To do so, I first visited Trafficschool with **both** JavaScript and cookies **enabled**
20 on my browser. Attached hereto as Exhibit 11 is a true and correct copy of a screenshot I
21 took of that website with JavaScript enabled on my web browser. I then visited
22 Trafficschool with **JavaScript disabled** on my web browser. Upon doing so, it became
23 apparent that Trafficschool is a website largely driven by JavaScript. Specifically, I was
24 not able to view most of the content I viewed when JavaScript was enabled and also
25 unable to use it properly. For example, with JavaScript **disabled**, I was unable to: (1)
26 sign up for traffic school; (2) sign up for defensive driving; (3) sign up for drivers
27 education; (4) start a course; and (5) re-enter a course. Attached hereto as Exhibit 12 is a
28 true and correct copy of a screenshot I took of that website with **JavaScript disabled** on

1 my web browser. Finally, I again visited Trafficschool with cookies disabled on my web
2 browser. Upon doing so, I received an error message stating the following: "The
3 Trafficschool.com website requires that cookies be enabled in order to proceed."
4 Attached hereto as Exhibit 13 is a true and correct copy of a screenshot I took of that
5 website with cookies disabled on my web browser.

6 21. Another example of a website that will not function properly when
7 JavaScript is disabled is <http://www.webmd.com> ("WebMD"). I attempted to access
8 WebMD with JavaScript disabled on my web browser. When doing so, a large click box
9 on the webpage stopped functioning – *i.e.*, any attempt to click on it and complete it did
10 not succeed. When I accessed the same website with JavaScript enabled, the very same
11 "click-box" was functional and responsive to my inputs. Attached hereto as Exhibit 14
12 is a true and correct copy of a screenshot I took of that website displaying the "click-box"
13 in the middle of the page.

14 22. Based on our internal discussions and planning as set forth above, it is my
15 belief that the implementation of a splash page through the use of JavaScript and cookies
16 was the best solution available that would allow DMV.ORG to still be accessible to
17 search engines. Furthermore, this was determined to be the best solution to reach the
18 largest spectrum of users given the widespread use and acceptance of these technologies
19 as set forth above. This solution was also favored because DMV.ORG assumes
20 JavaScript capabilities for numerous other aspects of its website. For instance, if a user
21 has JavaScript disabled the following portions of DMV.ORG will not function:

22 a. The State Drop Down Menu – The state drop down menu is one of
23 the primary means for getting to content for a specific state. Without JavaScript
24 this menu does not even appear. This effects approximately 120,000 pages.

25 b. The Websites Search Function – Visitors without JavaScript are
26 unable to search our site using our search box. Nearly 1/3 of visitors use our site
27 search function. This effects approximately 120,000 pages.

28 c. Answers.dmv.org – Visitors without JavaScript cannot ask questions

1 at our question and answer product at <http://answers.dmv.org>.

2 d. Rate this Page – Users without JavaScript are unable to provide
3 feedback in our suggestion tool.

4 e. Purchase Insurance – Visitors without JavaScript are unable to
5 purchase insurance at our advertisers' Esurance, Progressive Insurance, and
6 Liberty Mutual's sites. This is one of our revenue streams.

7 f. Purchase Defensive Driving Courses – Visitors without JavaScript
8 are unable to purchase Defensive Driving courses at our advertiser's site
9 iDriveSafely.com. This is one of our revenue streams.

10 g. Purchase Practice Tests – Visitors without JavaScript are unable to
11 purchase practice tests at our advertiser's site iDriveSafely.com. This is one of
12 our revenue streams.

13 h. Purchase Driving Records – Visitors without JavaScript are unable
14 to purchase driving records at our advertiser's site DrivingRecords.com. This is
15 one of our revenue streams.

16 23. Between June 2008 (when the proposed injunction was issued) and August
17 2008 (when the Injunction was issued), we spent hundreds of hours analyzing our
18 options, seeking an option which would both meet the mandate of this Court but not also
19 destroy the accessibility of the content of the site. In this process, we spent significant
20 time and resources researching, brainstorming, analyzing, testing, and troubleshooting
21 different mechanisms for the display of a splash page in compliance with the Injunction.
22 For example, we considered several other methods including, without limitation, IP
23 Tracking, URL Query String (as suggested by plaintiffs), Hidden Form Fields, and
24 Adobe Flash. However, each method has its own imperfections, drawbacks, and would
25 present problems in terms of user adoption and penetration.

26 a. IP Tracking involves storing IP information from the request on the
27 server. IP Tracking would have allowed us to know if a request from an
28 individual IP was the first request and whether a splash page should be displayed.

1 The difficulty with this solution is that IP addresses are not unique per user.
2 Thousands of users can share the same IP address through an Internet Service
3 Provider. Thus, this method would be completely unreliable and would not allow
4 us to determine if a splash page had been shown or not.

5 b. URL Query Strings embed visitor information in the URL for each
6 request. This solution would have required us to amend each request with a Token
7 consisting of 16-32 characters. Each Token would represent a unique visitor and
8 would be stored on a database that tracks the visitor. The Token would also be
9 used to determine whether or not to display a splash page. The problem with this
10 solution is that Tokens are indexed by search engines. This means that when our
11 website shows up in a search engine result the Token would be displayed, harming
12 our users' ability to discern the relevance of our information. We currently have
13 very clean URLs. For example, the link on our website to driving records
14 information in the state of Alabama is: [http://www.dmv.org/al-alabama/driving-](http://www.dmv.org/al-alabama/driving-records.php)
15 [records.php](http://www.dmv.org/al-alabama/driving-records.php). The addition of a Token would make the URL look similar to this:
16 <http://www.dmv.org/al-alabama/driving records.php? refid =175W065ACOPTS>
17 [W S873SD](http://www.dmv.org/al-alabama/driving records.php? refid =175W065ACOPTS). This would decrease the readability of the URL and harm the
18 website's visibility to search engines because search engines credit websites with a
19 clean URL structure.

20 c. Hidden Form Fields embed "state" information into the HTML of a
21 page. There are several problems with this solution. First, anytime a user hits the
22 "back" button, the "state" information would be lost and the splash page would
23 display again. Second, this would impact the internal linking on the website by
24 changing every link to a form. Search engines do not follow these forms in the
25 same way that links are followed, and would not be able to navigate our site as
26 well.

27 d. Adobe Flash is extremely similar to JavaScript in that it is a client-
28 side technology. If we had used Flash, it would have operated in the same way as

1 our JavaScript and would test if the request came from a search engine and if the
2 request did not would display a splash page. We felt that any issues with Flash
3 would be the same as with JavaScript, and ultimately chose to use JavaScript
4 because it is a technology that is more widely deployed than Flash, and because
5 Online Guru had superior expertise with JavaScript given that it was already used
6 on DMV.ORG Therefore, it was determined that JavaScript would allow for a
7 faster and more efficient implementation of the splash page.

8 **MOBILE DEVICES**

9 24. I understand that Plaintiffs contend that the splash page is not visible to
10 users of mobile devices such as RIM BlackBerries and Palm Treos.

11 25. The device per se (*i.e.*, RIM BlackBerry, Palm Treo, Apple iPhone) is not
12 as relevant as the combination of the device's operating system and web browser type.

13 26. In choosing a solution, we tested over 130 combinations of operating
14 systems and web browsers with the goal of obtaining as much coverage as possible
15 without destroying accessibility of the site content to the search engines.

16 27. Omniture, Inc. is a third party company that sells web analytics software.
17 Omniture software is an industry standard tool used for tracking website internet traffic
18 and related statistics. Online Guru has a license to use Omniture's web analytics
19 software. Online Guru is therefore able to access a variety of forms of traffic data for the
20 DMV.ORG website through Omniture. I personally review reports from Omniture on a
21 regular basis to analyze the performance of the DMV.ORG website.

22 28. I have reviewed an Omniture report identifying the types of web browsers
23 used to access DMV.ORG for December of 2008. Attached hereto as Exhibit 15 is a true
24 and correct copy of this report.

25 29. According to these figures, individuals used a total of 159 different types of
26 web browsers to access DMV.ORG. Of these, our records show that 139 of those
27 browsers supported display of the splash page. Furthermore, of the remaining 20 web
28 browsers which did not support display of the splash page, this represented only 0.02%

1 of visitors.

2 30. Online Guru aimed to have 100% penetration across web browsers. Cross-
3 browser compatibility (*i.e.*, compatibility among the 100s of browsers) is an industry
4 wide problem. There are differences in every browser that impact the way websites are
5 displayed and function. All of this means that there simply is no industry standard for
6 splash pages, and no method, that will assure 100% user penetration without at the same
7 time precluding search engines from identifying content on the site itself.

8 **PLAINTIFFS' PROPOSED IMPLEMENTATION**

9 31. I have reviewed the Declaration of Thomas Benton Greenhaw V In Support
10 of Plaintiffs' Motion for Contempt Against Defendants for Violation of the Court's
11 Injunction and for Sanctions ("Greenhaw Decl.").

12 32. In his declaration, Mr. Greenhaw points to the mechanism that
13 Amazon.com employs for the display of splash pages. Specifically, in paragraph 15, he
14 states in pertinent part:

15 Amazon.com as well as many other active multi-visitor
16 websites, do not rely upon cookies or Java Script, but rather
17 attach a specific tracking number as part of the website URL
18 when a visitor is linked to or visits their site. When using this
19 procedure, the website server can identify each unique
20 computer user as they gain access to the website and navigate
21 within it. This highly utilized approach of assigning a
22 specific tracking number to each visitor upon linking to a
23 given site shifts the functionality of identifying a computer
24 user away from the computer user's Java Script enabled web
25 browser (as the Site now performs this function) and directly
26 to the web server such as the Site. In employing this type of
27 methodology – namely attaching a tracking number to each
28 visitor – a standard html web page could be used as a splash
screen and such a screen would then effectively be visible to

ALL COMPUTER USERS AND VISITORS TO THE SITE
....

(Greenhaw Decl. ¶ 15.)

33. Mr. Greenhaw's statement above is inaccurate. First, he is incorrect in

1 stating that Amazon.com and other active multi-visitor websites do not rely on cookies.
2 To test Mr. Greenhaw's assertion, I pointed my web browser to www.amazon.com.
3 Contrary to Mr. Greenhaw's position, Amazon.com instantly installed two cookies on my
4 browser ("session-id" and session-id-time"). Upon visiting a certain product page
5 another cookies was installed on my browser ("ubid-main"). Moreover, when I added
6 something to my shopping another cookie was installed on my browsers ("session-
7 token"). Attached hereto as Exhibit 16 are true and correct copies of screenshots I took
8 during the test showing Amazon.com's installation of cookies on my browser when I
9 visited the website, visited a certain product page, and added an item to my shopping cart.
10 These are "session" cookies substantially similar to those used by DMV.ORG to
11 implement the splash page.

12 34. It appears that Amazon.com uses a combination of client side and server
13 side solutions. This is because even a server side solution must still maintain and track a
14 user's "state." While it is true that Amazon.com assigns each user an ID when they visit
15 the site, as stated by Mr. Greenhaw, they track the user's "state" through cookies. When
16 a user travels around Amazon.com, cookies are passed from page to page, letting the
17 application know who is requesting the page. Without the cookie, the server would not
18 be able to track users from one page to the other, and would lose information about the
19 user (e.g., what is in his or her shopping cart). In fact, Amazon.com itself notes that
20 cookies are "safe," and that without cookies, a user will not be able to use certain features
21 of the website, explaining that "[c]ookies allow us to recognize you automatically
22 whenever you visit our site so that we can personalize your experience and provide you
23 with better service . . . [i]f your web browser is set to refuse cookies from our website,
24 you will not be able to complete a purchase or take advantage of certain features of our
25 website, such as storing items in your Shopping Cart or receiving personalized
26 recommendations." Attached hereto as Exhibit 17 is a true and correct copy of a
27 screenshot I took of an Amazon.com page explaining Amazon's use of cookies.

28 35. Furthermore, Mr. Greenhaw's position that using a standard html web page

1 for the splash page would be feasible for DMV.ORG does not appear to be accurate. As I
2 discussed above, a splash page implemented in such a manner would prevent users from
3 finding DMV.ORG's information through search engines. Greenhaw makes no mention
4 of the impact of a splash page upon the search engine. In such a case, search engines
5 would index the splash page, replace DMV.ORG's content with verbiage on the splash
6 page itself, and every page on the website will appear to have the same exact content (i.e.,
7 only a disclaimer). If this were to happen, DMV.ORG would cease to appear as a result
8 to user search engine queries.

9
10 **PREVIOUS ISSUES RAISED BY PLAINTIFFS,**
11 **AND ADDRESSED BY ONLINE GURU**

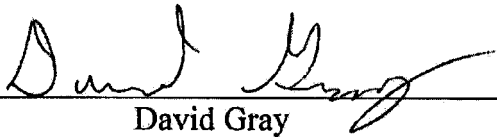
12 36. After the splash page went live, Plaintiffs began raising issues with the
13 splash page to Online Guru via its attorneys.

14 37. Given the substantial task and complexity involved in deploying a splash
15 page for nearly 120,000 pages on DMV.ORG, we engaged in ongoing testing and
16 troubleshooting efforts. Specifically, we conducted regression testing for the splash page
17 launch and attempted to cover as many permutations as possible using multiple resources.
18 We tracked analytics to verify impressions and clicks on the splash page on a daily basis.
19 We also carefully monitored user feedback daily for suggestions and comments regarding
20 the splash page. For any identified problem areas, immediate steps were taken to address
21 the issues.

22 38. For example, as set forth in the Declaration of Mina I. Hamilton In Support
23 of Plaintiffs' Motion for Contempt Against Defendants for Violation of the Court's
24 Injunction and for Sanctions ("Hamilton Decl."), Plaintiffs brought to our attention the
25 display of images and drop-down menus on the splash page. (See Hamilton Decl. ¶¶ 3-
26 6.) Those were technical bugs stemming from differences in implementation between the
27 hundreds of different browsers and browser versions for approximately 120,000 different
28 pages. Each version is built on proprietary implementations and interpretations of

1 specifications published by consortiums and professional associations such as W3C and
2 IEEE for example. Once the above issues were brought to our attention, the code was
3 immediately updated and the bug fixed. The errors on the display were not intentional
4 and provided for a bad user experience.

5 I declare under penalty of perjury under the laws of the United States of
6 America that the foregoing is true and correct and that I executed this declaration on
7 January 22, 2009 in San Diego, California.

8 
9 _____
10 David Gray